IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4272 OF 2006

M/s. Gaurda Aviation Services
Pvt. Ltd. ..Petitioner

Vs.

The Solapur Municipal Corporation ..Respondent

Mr. Vinay Hegde for petitioner.

CORAM: B.H. MARLAPALLE, J.

Date : July 17, 2006.

P.C.:

1. Heard Mr. Hegde the learned counsel for the petitioner.

2. On or about 27/8/2003 an agreement was signed between the petitioner-company and the Solapur Municipal Corporation for collection of octroi and the agreement commenced from 3/9/2003. Some disputes arose between the petiitoner-company and the Solapur Municipal Corporation and by letter dated 12/12/2003

the petitioner demanded refund of the deposited amount. The petitioner invoked arbitration clause in the agreement and approached the respondent-corporation for appointment of an arbitrator by its letter dated 9/3/2004. As the Corporation disputed the arbitrability, the petitioner approached this court by filing an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (the Act for short) and by the order dated 8/6/2004 this court appointed Mr. Justice H. Suresh (Retd.) as the sole arbitrator. The sole arbitrator passed an award on 18/8/2005. The Solapur Municipal Corporation challenged the said award by filing an application under Section 34 of the Act before the District Court at Solapur on or about 15/10/2005 and one of the grounds raised is regarding the arbitrability and more particularly on the ground that clause 25 of the tendered document and which was claimed to be the clause for appointment of the arbitrator was deleted with full knowledge to both the parties while executing agreement dated 27/8/2003 and thus there was no provision for initiating arbitral proceedings. The petitioner filed an application

before the District Court and contended that (a) it had no powers to entertain the challenge on arbitrability and (b) the appeal or an application under Section 34 of the Act cannot be entertained by the District Court ad it ought to be filed before the High Court. The learned 1st Ad-hoc Additional District Judge, Solapur has rejected this application by his order dated 18/4/2006 and hence this petition.

3. The opposition to the jurisdiction of the District Court was mainly raised by the petitioner on the basis of the decision in the case of SBP and Company vs. Patel Engineering Ltd. and anr. **[(2005) 8 SCC 618]**. However, the learned 1st Ad-hoc Additional District Judge held that the award passed by the sole arbitrator appointed under Section 11 of the Act and at the instance of the Solapur Municipal Corporation would lie before the District Court which is the Principal Court of original jurisdiction in Solapur District as per Section 2(1)(e) of the Act and the said Court will be entitled to examine all the issues raised in the application, including the clause of arbitration.

4. As per Mr. Hegde the appointment made by this court under Section 11(6) of the Act cannot be challenged before the District Court on the preliminary issue of arbitrability in view of the decision in the case of SBP and Co. (Supra).

5. It is required to be noted that the Supreme Court rendered its decision in the case of SBP and Co. on 26/10/2005 and in the instant case this court had appointed the sole arbitrator on 8/6/2004 and the arbitrator passed his award on 18/8/2005. There is nothing to show before this court that while dealing with the application under Section 11(6) of the Act, the issue of arbitrability was adjudicated and in any case the said application was not pending as on 26/10/2005 before this court. In addition, the application filed under Section 34 of the Act was also filed before the District Court prior to 26/10/2005 i.e. the decision rendered by the Apex Court in SBP and Co. Under these circumstances, the District Court will be competent to decide the application filed under Section 34 of the Act on all issues, including

the issues to be agitated under Section 16 of the Act before the arbitrator. Clause (x) of the conclusions in the case of SBP and Co. (Supra) reads as under:-

> (x) Since all were guided by the decision of this Court in Konkan Rly. Corpn. Ltd. v. Rani Construction (P) Ltd. and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or Arbitral Tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act."

6. Hence the impugned order cannot be termed as perverse or grossly erroneous so as to call for interference in a petition under Article 227 of the Constitution. The petition is hereby rejected summarily.

(B.H. Marlapalle,J.)